

(e) The availability of alternative sources of services in the community; and

(f) Any other factors that the QIO considers relevant, such as the duration of the problem.

### Subpart D—OIG Responsibilities

#### § 1004.100 Acknowledgement and review of report.

(a) *Acknowledgement.* The OIG will inform the QIO of the date it received the QIO's report and recommendation.

(b) *Review.* The OIG will review the QIO report and recommendation to determine whether—

- (1) The QIO has followed the regulatory requirements of this part; and
- (2) A violation has occurred.

(c) *Rejection of the QIO recommendation.* If the OIG decides that a sanction is not warranted, it will notify the QIO that recommended the sanction, the affected practitioner or other person, and the licensing board informed by the QIO of the sanction recommendation that the recommendation is rejected.

(d) *Decision to sanction.* If the OIG decides that a violation of obligations has occurred, it will determine the appropriate sanction by considering—

- (1) The recommendation of the QIO;
- (2) The type of offense;
- (3) The severity of the offense;
- (4) The previous sanction record of the practitioner or other person;
- (5) The availability of alternative sources of services in the community;
- (6) Any prior problems the Medicare or State health care programs have had with the practitioner or other person; and

(7) Any other matters relevant to the particular case.

(e) *Exclusion sanction.* If the QIO submits a recommendation for exclusion to the OIG, and a determination is not made by the 120th day after actual receipt by the OIG, the exclusion sanction recommended will become effective and the OIG will provide notice in accordance with § 1004.110(f).

(f) *Monetary penalty.* If the QIO recommendation is to assess a monetary penalty, the 120-day provision does not

apply and the OIG will provide notice in accordance with § 1004.110 (a)–(e).

[60 FR 63640, Dec. 12, 1995, as amended at 62 FR 23143, Apr. 29, 1997]

#### § 1004.110 Notice of sanction.

(a) The OIG must notify the practitioner or other person of the adverse determination and of the sanction to be imposed.

(b) The sanction is effective 20 days from the date of the notice. Receipt is presumed to be 5 days after the date on the notice, unless there is a reasonable showing to the contrary.

(c) The notice must specify—

- (1) The legal and factual basis for the determination;
- (2) The sanction to be imposed;
- (3) The effective date and, if appropriate, the duration of the exclusion;
- (4) The appeal rights of the practitioner or other person;
- (5) The opportunity and the process necessary to provide alternative notification as set forth in paragraphs (d) and (e) of this section; and
- (6) In the case of exclusion, the earliest date on which the OIG will accept a request for reinstatement.

(d) *Patient notification.* (1)(i) The OIG will provide a sanctioned practitioner or other person an opportunity to elect to inform each of their patients of the sanction action. In order to elect this option, the sanctioned practitioner or other person must, within 30 calendar days from receipt of the OIG notice, inform both new and existing patients through written notice—based on a suggested (non-mandatory) model provided to the sanctioned individual by the OIG—of the sanction and, in the case of an exclusion, its effective date. Receipt of the OIG notice is presumed to be 5 days after the date of the notice, unless there is a reasonable showing to the contrary. Within this same period, the practitioner or other person must also sign and return the certification that the OIG will provide with the notice. For purposes of this section, the term “all existing patients” includes all patients currently under active treatment with the practitioner or other person, as well as all patients who have been treated by the practitioner or other person within the last 3 years. In addition, the practitioner or